



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 226

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 71

1991

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 10 of 1991: Aviation Amendment Act, 1991.

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

[] Words in bold type in square brackets indicate omissions proposed.

ACT

To amend the Aviation Act, 1962, in order to adjust its provisions in view of the independence of Namibia; to provide for the appointment of a Director: Civil Aviation to perform the functions of the National Transport Commission in Namibia; to make further provision for certain cargo restriction; to extend the power of the Minister to make regulations; to provide for the incorporation in the regulations of certain international aviation standards by means of a mere reference thereto in a notice issued by the Minister; and to provide for matters incidental thereto.

(Signed by the President on 14 June 1991)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 74 of 1962, as amended by section 3 of Act 12 of 1965 and section 1 of Act 83 of 1969.

1. Section 1 of the Aviation Act, 1962 (hereinafter referred to as the principal Act), is hereby amended -

- (a) by the deletion of the definition of "Commission";
- (b) by the substitution for the definition of "Convention" of the following definition:

“ ‘Convention’ means the Convention on International Civil Aviation drawn up at Chicago on the seventh day of December, 1944, and adopted by section 1 of the Aviation Amendment Act, 1947 (Act No. 42 of 1947), and set out in the First Schedule to this Act, and includes any amend-

ments thereof and additions thereto [**ratified and proclaimed in accordance with paragraph (b) of sub-section (1) of section 3**] binding upon Namibia by virtue of the provisions of Articles 63(2)(e) and 144 of the Namibian Constitution;”;

- (c) by the insertion after the definition of “Convention” of the following definition:

“ ‘Director’ means the Director: Civil Aviation appointed under section 5;”;

- (d) by the substitution for the definition of “intoxicating liquor” of the following definition:

“ ‘intoxicating liquor’ means intoxicating liquor as defined in section [175 of the Liquor Act, 1928 (Act No. 30 of 1928)] 1 of the Liquor Ordinance, 1969 (Ordinance 2 of 1969);”;

- (e) by the substitution for the definition of “Minister” of the following definition:

“ ‘Minister’ means the Minister of [Transport] Works, Transport and Communication;”;

- (f) by the insertion after the definition of “Minister” of the following definition:

“ ‘Namibian aircraft’ means an aircraft registered in terms of this Act;”;

- (g) by the deletion of the definition of “Republic”;

- (h) by the deletion of the definition of “South African aircraft”; and

- (i) by the substitution for the definition of “Transit Agreement” of the following definition:

“ ‘Transit Agreement’ means the International Air Services Transit Agreement drawn up at Chicago on the seventh day of December, 1944, and adopted by section 2 of the Aviation Amend-

ment Act, 1946 (Act No. 41 of 1946), and set out in the Second Schedule to this Act, and includes any amendments thereof and additions thereto **[ratified and proclaimed in accordance with paragraph (b) of sub-section (1) of section 3]** binding upon Namibia by virtue of the provisions of Articles 63(2)(e) and 144 of the Namibian Constitution.”.

Substitution of section 2 of Act 74 of 1962, as amended by section 4 of Proclamation AG. 14 of 1978.

2. The following section is hereby substituted for section 2 of the principal Act:

“Application of Act.

2. (1) The provisions of this Act and of the Convention and of the Transit Agreement, shall, except where expressly excluded under this Act or by regulation, apply to all aircraft whilst in or over any part of **[the Republic]** Namibia or the territorial **[waters]** sea thereof and to all Namibian aircraft and personnel wheresoever they may be.

(2) For the purposes of subsection (1) the personnel of an aircraft shall be deemed to include the pilot-in-command or other person in charge of the aircraft, and all other members of the crew of the aircraft.

(3) The provisions of this Act and of the Convention and of the Transit Agreement shall not apply to aircraft or aerodromes belonging to the **[Department]** Ministry of Defence or for the time being in use exclusively by the **[South African]** Namibia Defence Force, or to any person employed on or in connection with such aircraft or aerodromes, irrespective of whether such person is so employed in a military or civil capacity: Provided that the Minister, after consultation with the Minister of Defence, may by notice in the *Gazette* apply to any such aircraft, aerodrome or person any of the said provisions with or without modification.”.

Substitution of section 3 of Act 74 of 1962.

3. The following section is hereby substituted for section 3 of the principal Act:

"Power to carry out Convention and Transit Agreement.

3. The President may issue such proclamations as appear to him or her necessary for carrying out the Convention or the Transit Agreement and for giving effect thereto or to any of the provisions thereof."

Substitution of section 5 of Act 74 of 1962, as amended by section 5 of Proclamation AG. 14 of 1978.

4. (1) The following section is hereby substituted for section 5 of the principal Act:

"Appointment of Director: Civil Aviation.

5. The Minister shall appoint, subject to the laws on the public service, a person as Director: Civil Aviation."

(2) A reference in a law passed before the commencement of this Act to the Commissioner of Civil Aviation, shall be construed as a reference to the Director: Civil Aviation appointed under section 5 of the principal Act, as amended by subsection (1) of this section.

Amendment of section 6 of Act 74 of 1962, as amended by section 36 of Act 55 of 1965 and section 95 of Act 63 of 1975.

5. Section 6 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"The [**State President**] Minister may out of moneys appropriated by Parliament for the purpose—"

Amendment of section 6bis of Act 74 of 1962, as inserted by section 4 of Act 12 of 1965 and amended by section 2 of Act 83 of 1969.

6. Section 6bis of the principal Act is hereby amended -

(a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

"(a) through the [**Department of Transport**] Ministry of Works, Transport and Communication undertake the sale of intoxicating liquor for consumption in or on the premises referred to in subsection (3) of this section, [**subject to the provisions of section 5(3) of the Liquor Act, 1928 (Act No. 30 of 1928),**] other refreshments, smokers' requisites, reading-matter and such other goods as the Minister may deem fit, at any aerodrome established and maintained in terms of section 6, and the sale, in any transit area designated under subsection (4) of this section at any such aerodrome, of intoxicating liquor for consumption outside [**the Republic**] Namibia;

(b) grant permission to any person or to two or more persons jointly or separately to sell, subject to such conditions as the Minister may impose when granting such permission or as may be prescribed, at any such aerodrome any one or more of or all the following classes of goods, namely, intoxicating liquor for consumption in or on the premises referred to in subsection (3) of this section, **[subject to the provisions of section 5(3) of the Liquor Act, 1928,]** other refreshments, smokers' requisites, reading-matter and such other goods as the Minister may deem fit, and, in any transit area designated under subsection (4) of this section at any such aerodrome, intoxicating liquor for consumption outside **[the Republic] Namibia** **[: Provided that such permission to sell intoxicating liquor shall not be granted to a person to whom, in terms of the provisions of section 65 of the Liquor Act, 1928, a bar licence may not be granted, or to a producer, manufacturer, brewer, agent, nominee, person or company contemplated in section 114ter of the said Act.].**”;

(b) by the deletion of subsection (2);

(c) by the substitution for subsection (4) of the following subsection:

“(4) Notwithstanding the provisions of section **[75 of the Liquor Act, 1928]** 78(2)(c) of the Liquor Ordinance, 1969 (Ordinance 2 of 1969), the Minister may in respect of any portion or portions of any premises referred to in subsection (3) of this section, designated by him or her as a transit area or transit areas as the case may be, fix days and hours of sale and delivery of intoxicating liquor and any days or hours so fixed shall be deemed to be the days on which or the hours during which liquor may in terms of the said section **[75]** 78(2)(c), be sold or delivered in such area or areas.”; and

(d) by the deletion of subsection (5).

7. Section 7 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“The [State President] Minister may out of moneys appropriated by Parliament for the purpose-”.

Amendment of section 9 of Act 74 of 1962.

8. Section 9 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) on any undermined ground or within a distance of **[three hundred feet]** ninety-five metres from any undermined ground or any open mine excavation unless, in the opinion of the Government Mining Engineer such aerodrome could be used with safety;”.

Repeal of section 10 of Act 74 of 1962.

9. Section 10 of the principal Act is hereby repealed.

Amendment of section 13 of Act 74 of 1962.

10. Section 13 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) Where it is alleged by any person interested that a foreign aircraft (other than an aircraft to which section 14 applies) making a passage through or over **[the Republic]** Namibia infringes in itself or in any part of it any invention, design or model which is entitled to protection in **[the Republic]** Namibia, **[any provincial or local division of the Supreme Court having jurisdiction]** the High Court of Namibia may (pending action to be brought), order the detention of such aircraft until the owner thereof deposits or secures in respect of the alleged infringement a sum determined in accordance with the provisions of paragraph (a) of subsection (2) (hereinafter referred to as the deposited sum).”.

Amendment of section 15 of Act 74 of 1962.

11. Section 15 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) If the owner, pilot-in-command or person in charge of any aircraft commits an offence under this Act from or in respect of that aircraft or if reasonable suspicion exists that such an offence has been committed or attempted or is about to be committed or attempted from or in respect of any aircraft by the owner, pilot-in-command or person in charge thereof, any member of the

[**South African**] **Namibian** Police Force [**or any officer of the South African Defence Force**] may, pending the trial of the charge, detain the aircraft in question.”

Insertion of section 16 in Act 74 of 1962.

12. The following section is hereby inserted in the principal Act after section 15:

“Prohibition of conveyance of armaments in aircraft.

16. (1) Except with the written permission of the Minister or a person in the service of the State authorized thereto by the Minister and subject to such conditions as the Minister or such person may determine, no person shall convey any armaments in an aircraft.

(2) An aircraft which is upon reasonable grounds believed to be engaged in conveying any armaments contrary to the provisions of subsection (1), shall be subject to the provisions of the regulations with regard to the identification and interception of aircraft.

(3) A person who is an authorized person for the purposes of the Civil Aviation Offences Act, 1972 (Act 10 of 1972), may in exigent circumstances, without derogating from any power which such authorized person may have under the Criminal Procedure Act, 1977 (Act 51 of 1977), at any aerodrome or place in Namibia, without a warrant -

(a) search any aircraft which such authorized person reasonably believes to be used or to have been used to convey any armaments contrary to the provisions of subsection (1) of this section, and any cargo or goods on board such an aircraft;

(b) seize -

(i) any armaments found during a search carried out under paragraph (a) of this subsection;

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(ii) any aircraft on which such armaments are found; and

(iii) any other thing which in the opinion of such authorized person was used or is intended to be used for the commission, or in connection with the commission, of an offence under this section; and

(c) arrest any person who is found on board an aircraft contemplated in paragraph (a) of this subsection and whom such authorized person reasonably suspects of having committed an offence under this section or of attempting to commit such an offence.

(4) If an authorized person referred to in subsection (3) attempts to arrest any person under paragraph (c) of that subsection and such person -

(a) resists the attempt and cannot be arrested without the use of force; or

(b) flees when it is clear that an attempt to arrest such person is being made, or resists such attempt and flees,

the authorized person may, in order to make the arrest, use such force as may in the circumstances be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing, and may call on any competent person to assist him or her to make the arrest.

(5) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to imprisonment without the

option of a fine for a period not exceeding 10 years.

- (6) (a) Any armaments, aircraft or other thing seized under subsection (3)(b) shall be forfeited to the State unless the court at the trial of any person accused of the contravention concerned of subsection (1) finds -
- (i) in the case of such armaments, that they were not conveyed contrary to the provisions of the last-named subsection and were not intended to be used for any unlawful purpose; or
 - (ii) in the case of such an aircraft or other thing, that it was not used or intended to be used for the commission, or in connection with the commission, of any offence.
- (b) Anything forfeited in terms of paragraph (a) shall be disposed of as the Minister may either generally or in a particular case order.
- (c) The provisions of paragraph (a), in so far as they relate to an aircraft, shall not affect the rights which any person other than a person accused of the contravention concerned of subsection (1) may have to such an aircraft, if he or she, within 30 days of the seizure thereof, satisfies the Minister, by means of proof in writing submitted through the Permanent Secretary: Works, Transport and Communication that he or she did not know that the aircraft

was used or intended to be used for the commission, or in connection with the commission, of any offence, or that he or she took all reasonable steps to prevent the use thereof in connection with the offence.

(7) For the purposes of this section the expression 'armaments' shall include any bombs, ammunition or weapons, or any substance, material, raw material, components, equipment system, articles or technique of whatever nature capable of being used in the development, manufacture or maintenance of armaments or for defence purposes or other purposes determined by the Minister, but with the exception of any such armaments while being conveyed in an aircraft -

(a) on behalf of the State;

(b) by or on behalf of -

(i) any person in his or her capacity as an officer or employee of the State;

(ii) any person who is entitled by virtue of the Arms and Ammunition Act, 1969 (Act 75 of 1969), to possess the armaments concerned or to have the armaments concerned in his or her custody."

Amendment of section 22 of Act 74 of 1962, as amended by section 5 of Act 12 of 1965, section 3 of Act 83 of 1969 and section 25 of Act 62 of 1973.

13. Section 22 of the principal Act is hereby amended -

(a) by the deletion of subparagraph (vi)ter of paragraph (e) of subsection (1);

(b) by the substitution for paragraph (n) of subsection (1) of the following paragraph:

"(n) the [regulation of the] lighting or marking of [any obstruction] obstructions at or within

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the prescribed distance from an aerodrome or exceeding [a] the prescribed height [within a prescribed distance from any aerodrome] or which according to any other criteria, or in the opinion of a person, specified in the regulations, constitute a danger to aircraft;”;

(c) by the deletion of paragraph (nA) of subsection (1); and

(d) by the addition to subsection (1) of the following paragraphs:

“(z) the requirements to be observed and the steps to be taken in connection with the conveyance in aircraft of any animal as defined in section 1 of the Animals Protection Act, 1962 (Act 71 of 1962), or any fish as defined in section 1 of the Sea Fisheries Act, 1973 (Act 58 of 1973);

(zA) the compilation of operational directives in respect of aircraft and aerodromes by owners, the matters to be dealt with in such directives, the approval of such directives by a person specified in the regulations and the issue of such approved directives, or other directives of a similar nature compiled or published by authoritative bodies or organizations, to persons employed on or in connection with aircraft or aerodromes;

(zB) the exercise of control over the conveyance in aircraft of dangerous goods defined or described in the regulations, including -

(i) a prohibition of such conveyance of particular dangerous goods;

(ii) a prohibition of such conveyance of dangerous goods not subject to a prohibition under subparagraph (i), otherwise than either in accordance with the conditions, requirements and safety measures set out in the regulations, or under the authority of a permission in writing given in any particular case by a person specified in the regulations;

- (iii) the licensing of or the issue of certificates to persons specified in the regulations and engaged in the consigning of dangerous goods in aircraft or the acceptance of such goods; and".

Insertion of section 22A in Act 74 of 1962.

14. The following section is hereby inserted in the principal Act after section 22:

"Incorporation of international aviation standards in regulations.

22A. (1) The Minister may by notice in the *Gazette* incorporate in the regulations any international aviation standard, without stating the text thereof, by mere reference to the number, title and year of issue of that aviation standard or to any other particulars by which that aviation standard is sufficiently identified.

(2) Any international aviation standard incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to a provision of this Act, be deemed to be a regulation made as provided for in section 22.

(3) A notice under subsection (1) shall come into operation on a date specified in the notice, but not before the expiry of 30 days after the date of publication of the notice.

(4) If any international aviation standard is at any time after the incorporation thereof in the regulations amended or substituted by the International Civil Aviation Organization, the notice incorporating that aviation standard in the regulations shall, unless otherwise stated therein, be deemed to refer to that aviation standard as so amended or substituted, as the case may be.

(5) An officer in the Ministry of Works, Transport and Communication designated by the Minister for such purpose shall keep in his or her office a

copy of the complete text of each international aviation standard incorporated in the regulations under subsection (1) and of each amendment and substitution of any such aviation standard, and shall at the request in writing of any interested person make such copy available free of charge to any such person for inspection or for making a copy thereof (at such person's expense) at a place approved by such officer.

(6) Whenever in any judicial proceedings the question arises whether any writing contains the text of an international aviation standard incorporated in the regulations under subsection (1), or of any amendment or substitution of any such aviation standard, any writing purporting to be a statement by a person who in that statement alleges that he or she is an officer in the Ministry of Works, Transport and Communication and that a particular writing described in or attached to the statement contains the said text, shall on its mere production at those proceedings by any person be *prima facie* proof of the facts stated therein.

(7) In this section 'international aviation standard' means any international standard or recommended practice or procedure adopted by the International Civil Aviation Organization for the purposes of article 37 of the Convention."

Substitution of long title to Act 74 of 1962.

15. The following long title is substituted for the long title to the principal Act:

"To consolidate the laws enabling effect to be given to certain International Aviation Conventions and making provision for the control, regulation and encouragement of flying within [**the Republic of South Africa**] Namibia and for other matters incidental thereto."

Substitution of certain words in Act 74 of 1962.

16. The principal Act is hereby amended -

- (a) by the substitution for the words "the Republic", wherever they occur, of the word "Namibia";
- (b) by the substitution for the words "South African aircraft", wherever they occur, of the words "Namibian aircraft";
- (c) by the substitution for the words "State President", wherever they occur, of the word "President";
- (d) by the substitution for the word "Commission", wherever it occurs, of the word "Director";
- (e) by the substitution for the words "Minister of Mines", wherever they occur, of the words "Minister of Mines and Energy";
- (f) by the substitution for the words "Department of Transport" of the words "Ministry of Works, Transport and Communication";
- (g) by the substitution for the words "South African Police" of the words "Namibian Police Force";
- (h) by the substitution for the words "Secretary for Transport" of the words "Permanent Secretary: Works, Transport and Communication";
- (i) by the substitution for the words "territorial waters" of the words "territorial sea"; and
- (j) by the substitution for the words "Consolidated Revenue Fund" of the words "State Revenue Fund".

Short title.

17. This Act shall be called the Aviation Amendment Act, 1991.
